

United States
Circuit Court of Appeals

For the Ninth Circuit.

SAMUEL L. BOYD, as Trustee in Bankruptcy of
the LANE LUMBER COMPANY, LIM-
ITED, a Corporation, Bankrupt,

Appellant,

vs.

M. K. WALL,

Appellee.

In the Matter of the LANE LUMBER COMPANY,
Limited, a Corporation, Bankrupt.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Idaho, Northern Division.

FILED

JAN 17 1914

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Assignments of Error by Trustee.....	39
Attorneys, Names and Addresses of.....	1
Certificate of Clerk U. S. District Court to Trans- cript of Record, etc.....	44
Conclusions of Law.....	35
Decision, Memorandum.....	25
EXHIBITS:	
Exhibit "A" — Order Allowing Secured Claim of M. K. Wall.....	19
Findings of Fact and Conclusions of Law.....	32
Judgment.....	36
Memorandum Decision.....	25
Names and Addresses of Attorneys.....	1
Opinion, Memorandum.....	25
Order Allowing Secured Claim of M. K. Wall...	12
Petition by Trustee for Appeal and Order Allow- ing Same.....	37
Petition to Referee in Bankruptcy for Review..	15
Praeceptum for Transcript of Record.....	41
Proof of Secured Claim of M. K. Wall.....	1
Report of Referee.....	22
Return to Record.....	43
Stipulation as to Transcript of Record on Ap- peal.....	42

On and prior to the 6th day of March, 1911, the said M. K. Wall, this claimant, was the owner of, in possession and entitled to the possession of the following described land situated in the County of Kootenai, State of Idaho, as follows, to wit: The east half of the northwest quarter (E./2 NW./4) of section thirty-five (35), and the southeast quarter of the southwest quarter (SE./4 SW./4) of section twenty-six (26), all in township (49), north of range (2), W. B. M., upon which date the said M. K. Wall made, executed and delivered to the Lane Lumber Company, Limited, bankrupt, a warranty deed for conveying said land to said bankrupt at the agreed consideration of the sum of \$5,000, which said deed was so made, executed and delivered by claimant to said bankrupt upon the following terms and conditions, to wit:

At the time of the execution and delivery thereof, the said bankrupt informed and represented to claimant that it had [1*] practically completed negotiations for mortgaging and bonding certain of its real estate, the description of which is unknown to claimant, and that when said negotiations were completed, it would receive therefrom a large sum of money, and that if claimant would deed to it his said property and deliver possession thereof to it, that it would pay him out of the moneys received from such mortgaging or bonding of its property or a sale of the property deeded by him to it as aforesaid the full sum of \$5,000.00, which was the agreed consideration for the transfer by him to said bank-

*Page-number appearing at foot of page of original certified Record.

rupt of said premises. It was further agreed between said bankrupt and said claimant that the said bankrupt would complete said negotiations for bonding or mortgaging its said property or find a purchaser for the property deeded by claimant to it according to the terms hereinbefore recited, on or before the first day of June, 1911, and that it would pay to him the sum of \$5,000.00, the consideration named for said conveyance on or before June, 1911. That on the 16th day of March, 1911, the said deed was filed for record in the office of the County Recorder of Kootenai County, Idaho, and thereafter recorded in Book 42 of Deeds at page 294, Records of said County, a copy of which deed is hereto attached, hereby referred to, marked Exhibit 1 and made a part hereof. That said claimant put the bankrupt in possession of said lands with the mutual understanding and agreement that efforts would be made by said bankrupt to bond or mortgage its said property as aforesaid, or sell the said property deeded by claimant to it, and that when its said property was so bonded or incumbered, or the land deeded to it by claimant sold, the said bankrupt would pay to claimant the agreed consideration of \$5,000 for the conveyance by him to bankrupt of said premises, and the said claimant did and performed everything agreed to be done and performed by him, and released to the said bankrupt whatever claim or interest he had in said premises or any part [2] thereof by virtue of, in accordance with, and because of said agreement, and delivered possession of said premises to said bankrupt, and on his part the said

contract was fully complied with, which said debt is past due and is now owing by the said bankrupt to claimant, and that no part thereof has been paid.

3. That there are no offsets or counterclaims to said debt, and that this claimant has not, nor has any person by his order or to the knowledge or belief of this deponent, for his use or benefit, had or received any manner of security for said debt whatever, except that pursuant to and by reason of the terms and conditions of said contract and agreement and the performance in full by claimant of *the* all the terms and conditions of said contract and agreement on his part to be done and performed, and said premises hereinbefore described, and the whole thereof and the proceeds of the sale of said property, if sold, were and are appropriated and dedicated to the payment of the agreed consideration for the transfer of said property by claimant to bankrupt, to wit: the sum of \$5,000, and said premises were by said contract and the dealings had by said claimant and said bankrupt with reference thereto as before stated, set aside, dedicated and appropriated to the benefit of claimant, for the purpose of securing said claimant in the payment by said bankrupt to him of the full sum of \$5,000, the agreed consideration therefor, with interest thereon at the rate of 7% per annum from June 1, 1911, to June 20, 1911, and that the said premises, and the whole thereof, were and are impressed with an equitable lien and assignment and appropriation in favor of the claimant to secure him in the payment of said sum of \$5,000 by virtue of the execution and delivery of said deed thereto by

claimant to bankrupt and the performance of all the terms and conditions by claimant on his part to be done and performed, and the failure by said bankrupt to pay to said claimant the consideration for said transfer, and the said claimant had and has, claims and assets, a vendor's lien [3] thereon for so much of the agreed purchase price thereof as remains unpaid and unsecured, to wit, the full sum of \$5,000, and the said claimant has, claims and assets the right and authority to the extent of said sum of \$5,000 to take, remove, sell and dispose of said property and enforce his lien thereon, and it was intended and agreed by and between said bankrupt and claimant at the time of said conveyance that the said real estate hereinbefore described should be and was charged and impressed with a lien in favor of said claimant to secure him in the payment of said sum of \$5,000.

4. That, except as hereinbefore stated, the said claimant's debt remains unsecured.

5. That the said lien so acquired is still in full force and effect and has not been satisfied, nor have said lands or any part thereof been released by claimant from the security thereby given and intended.

6. That no note has been given or received for said debt, nor has any payment been rendered thereon.

7. That on the 29th day of July, 1911, said Lane Lumber Company, Limited, was adjudged an involuntary bankrupt by the Judge of the District Court of the United States for the District of Idaho,

and that thereafter on the 29th day of July, 1911, Lawrence F. Connolly was appointed receiver of the estate of said bankrupt, qualified as such, and took possession of all of the bankrupt's property, and took possession of the property conveyed by claimant to bankrupt and hereinbefore referred to. Thereafter and on the 29th day of July, 1911, an order of reference was made of the above-entitled bankruptcy proceedings by the Judge of said Court, referring said bankruptcy matter to Lawrence L. Lewis, one of the duly appointed referees in bankruptcy in said court, with his office at the city of Coeur d'Alene, Kootenai County. Idaho. Thereafter and on the 18th day of September, 1911, Samuel L. Boyd was appointed by said referee, trustee in bankruptcy of all the real estate and personal [4] property of the said bankrupt; that he thereafter qualified as such trustee, and that all the assets of said bankrupt and the lands deeded as aforesaid by claimant to said bankrupt passed into the control of said bankruptcy court and into the control and possession of said Samuel L. Boyd, as trustee. That on account of the filing of said petition in bankruptcy on, to wit, June 20, 1911, against said bankrupt, and the intervening and subsequent proceedings therein and the appointment of said receiver and trustee to take charge of and dispose of the property of said bankrupt as hereinbefore recited, the said bankrupt was unable to, and failed to complete said negotiations for mortgaging or bonding its said property, and failed and neglected to sell or in any way dispose of the property of the claimant in ac-

cordance with the terms and conditions of said agreement relating thereto, and wholly failed to pay said claimant the sum of \$5,000 or any part thereof, and wholly failed to carry out and perform the terms and conditions of said contract and agreement on its part to be done and performed before or on the 1st day of June, 1911, or at all.

8. That there was a total failure of consideration for the conveyance by claimant to bankrupt of said premises, save and except that the claimant fully performed all things on his part to be done and performed under said agreement and contract, and delivered possession of said premises to the bankrupt.

9. That the said bankruptcy court and the said Lawrence F. Connolly as receiver and trustee, and the said Samuel L. Boyd as trustee, and each thereof, took possession of said property conveyed by claimant to bankrupt, and the whole thereof, subject to the paramount and unsatisfied lien and equities of the claimant, and that the said appropriation and dedication of said property to secure claimant in the payment of said sum of \$5,000, and the said lien of claimant thereover followed the said property at all times, and [5] the said property is still subject to the said lien and equities of claimant, and the said claimant is entitled to enforce his said claim for \$5,000 against the particular property deeded by him to the bankrupt, and against the proceeds of the sale thereof, if a sale is made in said bankruptcy proceedings or by said trustee or by his successor or successors. And the said M. K. Wall, claimant, has, claims and asserts his right to enforce his said lien against

the said property now in the possession of said trustee and to collect the said sum of \$5,000 from said property, or from the proceeds thereof if sold.

10. That the rights of no purchaser or encumbrancer in good faith and for value of said property, or any part thereof, have intervened or have been or can or will be affected in any way by the assertion and enforcement of claimant's said lien against said property or the proceeds thereof if a sale is made.

M. K. WALL.

Subscribed, sworn to and acknowledged by the said M. K. Wall, personally known to me, this 19th day of June, 1912.

[Seal]

FRANK E. LANGLEY.

Notary Public.

United States of America,
State of Idaho,
County of Kootenai,—ss.

On this 29th day of June, 1912, before the undersigned notary public in and for the county and State aforesaid, personally appeared M. K. Wall, to me personally known, who being by me duly sworn, deposes and says: That he resides at Harrison, Idaho, and that he is the claimant who executed the foregoing instrument, and that he executed the same freely and voluntarily for the uses and purposes therein stated.

[Seal]

FRANK LANGLEY,

Notary Public. [6]

51271.

THIS INDENTURE, Made this 6th day of March, in the year of our Lord, one thousand nine

hundred and eleven, BETWEEN Michael K. Wall and Agnes C. Wall, his wife, of Harrison, County of Kootenai, State of Idaho, the parties of the first part, and the Lane Lumber Company, Limited, a corporation, of Harrison, County of Kootenai, State of Idaho, the party of the second part.

WITNESSETH: that the said parties of the first part, for and in consideration of the sum of Five Thousand (\$5000.00) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to its heirs, successors and assigns forever, all the following described real estate situated in the county of Kootenai, State of Idaho, to wit:

East one half ($E.1\frac{1}{2}$) of the northwest quarter ($NW.1\frac{1}{4}$) of section thirty-five (35), and southwest quarter ($SW.1\frac{1}{4}$) of the southwest quarter ($SW.1\frac{1}{4}$) of section twenty-six (26), all in township forty-nine (49), north of range two (2), W. B. M., and containing 120 acres.

TOGETHER with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD all and singular, the

above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its heirs, successors and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs successors and assigns, [7] against the said part. . of the first part, and their heirs and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seal the day and year first above written.

MICHAEL K. WALL. [Seal]

AGNES C. WALL. [Seal]

Signed, sealed and delivered in the presence of

CHAS. A. ZEIGE.

O. J. BUTLER.

State of Idaho,

County of Kootenai,—ss.

On this 11th day of March, in the year 1911, before me, M. W. Frost, a notary public in and for said county, personally appeared Michael K. Wall and Agnes C. Wall, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same, and on this day of March, in the year 1911, before me, the officer above described, personally appeared Agnes C. Wall, known to me to be the person whose name is subscribed to the within instrument, described as a married woman, and upon

an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial seal]

M. W. FROST,
Notary Public, Harrison, Idaho. [8]

State of Idaho,
County of Kootenai,—ss.

I hereby certify that this instrument was filed for record at the request of A. Cook at 32 minutes past 1 o'clock P. M. this 16th day of March, 1911, in my office, and duly recorded in book 42 of deeds at page 294.

D. E. DANBY,
Ex-officio Recorder.
C. A. McDonald,
Deputy.

Fee \$1.50.

State of Idaho,
County of Kootenai,—ss.

I, D. E. Danby, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing is a full, true and correct copy of the whole thereof of deed from M. K. Wall and wife to Lane Lumber Co., as the same appears of record in my office in book 42 of Deeds, on page 294.

In testimony whereof, I have hereunto set my hand

and affixed my official seal this 19th day of June, 1912.

[Seal]

D. E. DANBY,
County Recorder.
M. C. Quarles,
Deputy. [9]

[Endorsed]: #449. (E) L. In the District Court of the U. S. for the District of Idaho, Northern Division. In the Matter of Lane Lbr. Co., Ltd., a Corporation, Involuntary Bankrupt. Proof of Secured Debt of M. K. Wall, Amount \$5,000.00. Record, p. 1323 to 1363. Filed this 19th day of June, 1912, at 3:20 P. M. L. L. Lewis, Referee. Kiger and Langley, Attorneys for M. K. Wall, Coeur d'Alene, Idaho. Filed December 23, 1913. A. L. Richardson, Clerk. [10]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

Order Allowing Secured Claim of M. K. Wall.

The proof of secured debt of M. K. Wall, a creditor herein, and the objections of Samuel L. Boyd, trustee of said estate, the Northern Trust Company, Union Iron Works, Bank of California, Post, Avery and Higgins, and, all other objections thereto, having come regularly on for hearing, Frank Langley

appearing of counsel for said M. K. Wall, and E. N. La Veine, A. E. Russell, Reed & Boughton and John H. Wourms appearing for the trustee, Bank of California, Post, Avery & Higgins, the petitioning creditors herein, and, Harry L. Day, assignee of the State Bank of Commerce, respectively, H. M. Stephens appearing for the Carnegie Trust Company, and, after argument of respective counsel, the consideration of briefs submitted, the entire matter having been first duly considered and the Court being fully advised in the premises:

IT IS ORDERED that the said objections herein submitted, and each of them, be, and the same are, hereby overruled;

IT IS FURTHER ORDERED that the claim of the said M. K. Wall be, and the same is, hereby allowed in the sum of Five Thousand (\$5,000.00) Dollars;

IT IS FURTHER ORDERED that the said M. K. Wall be, and he is, hereby declared to have a vendor's lien on the east half of the northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$) of section thirty-five, and the southeast quarter of the southwest quarter (SE. $\frac{1}{4}$ SW. $\frac{1}{4}$) of section twenty-six (26), township forty-nine (49) north, range two (2), W. B. M., Kootenai County, Idaho, the property of said bankrupt, for the said sum of Five Thousand (\$5,000.00) Dollars, [11] the purchase price thereof;

IT IS FURTHER ORDERED that the said trustee be, and he is, hereby directed to sell in accordance with law and the practice of this Court, the above-described real property, and the whole thereof, and

to apply the proceeds arising from said sale to the payment, satisfaction and discharge of the claim, constituting a vendor's lien on said property, of the said M. K. Wall, the residue and remainder of said proceeds, if any there be, to be passed to the proper fund of said estate;

AND IT IS FURTHER ORDERED that in the event that the above-described land does not sell for sufficient to satisfy and discharge, in full, the claim of the said M. K. Wall for the said sum of Five Thousand (\$5,000.00) Dollars, as herein allowed; then such deficiency, if any there be, be, and the same is, hereby allowed as an unsecured claim against said estate.

Done at Coeur d'Alene, Idaho, in said District, this 31st day of July, A. D. 1913.

LAWRENCE L. LEWIS,

Referee in Bankruptcy.

Service of the within Order is hereby admitted and the receipt of a copy thereof is hereby acknowledged at Coeur d'Alene, Idaho, this 16th day of August, 1913.

E. N. LaVEINE,

Attorney for Samuel L. Boyd, Trustee. [12]

[Endorsed]: #449. In the Matter of the Lane Lumber Company, Limited, Involuntary Bankrupt. Order Allowing Secured Claim of M. K. Wall. Filed as of July 31st, 1913, this 16th day of August, 1913, at 10:30 o'clock A. M. L. L. Lewis, Referee. Filed December 23, 1913. A. L. Richardson, Clerk. [13]

[Petition to Referee in Bankruptcy for Review.]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

#449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,

Involuntary Bankrupt.

PETITION FOR REVIEW ON REFEREE'S
ORDER ALLOWING SECURED CLAIM
OF M. K. WALL IN THE SUM OF \$5,000,
ESTABLISHING A VENDOR'S LIEN.

To Honorable LAWRENCE L. LEWIS, Referee in
Bankruptcy.

Your petitioner respectfully shows:

That he is the duly appointed, qualified and acting
trustee of the Lane Lumber Company, Limited, a
corporation, the above-named bankrupt;

That on June 19, 1912, M. K. Wall filed his proof
of claim of secured debt praying for the Court to
adjudge the amount claimed in said proof of debt,
to wit, \$5,000, as a vendor's lien on the east half
(E. $\frac{1}{2}$) of the northwest quarter (NW. $\frac{1}{4}$) of sec-
tion thirty-five (35), and the southeast quarter
(SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of sec-
tion twenty-six (26), township 49 north, range 2, W.
B. M. Kootenai County, Idaho;

That thereafter on August 10, 1912, the trustee
herein filed objections to said proof of debt of M. K.
Wall above referred to;

That thereafter a hearing was had and the matter

was submitted to the referee of the above-entitled court;

That on August 16, 1913, the referee made and entered an order herein decreeing to said M. K. Wall a vendor's lien on the above-described land in the aforesaid amount, a copy of which order is hereto attached and made a part hereof and marked Exhibit "A";

That said order was and is erroneous in that;

1. That claimant is guilty of laches for waiting until after the filing of the petition in bankruptcy herein, which was filed on June 20, 1911, before attempting to assert his pretended [14] vendor's lien;

2. That the title to the property of the bankrupt, including the land described in claimant's said proof of debt, passed to the trustee on September 26, 1911, who was thereupon and *and* still is "Vested with rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," making the trustee's title paramount to that of the vendor lien claimant;

3. That prior to the filing of said claim, on, to wit, the 16th day of October, 1911, the trustee caused to be filed for record with the County Recorder of Kootenai County, Idaho, a duly certified copy of the Order of Adjudication herein which was recorded in Book Y of Mis. Rec., p. 70, which act vested the title of said east half (E.1/2) of the northwest quarter (NW.1/4) of section thirty-five (35), and the southeast quarter (SE.1/4) of the southwest quarter (SW.1/4) of section twenty-six (26), township 49

north, range 2, W. B. M., absolutely in the trustee, subject only to the valid liens asserted of record;

4. That the sum claimed to be the purchase price was far in excess of the reasonable value of the land described, at the date of the alleged sale; that the purchase price thereof was not authorized by the board of directors;

5. That said transfer was made by claimant, who was an officer of the bankrupt, to wit, secretary thereof, with full knowledge of the embarrassed financial condition of the bankrupt at the time of said transfer; that it was his duty at said time to secure the purchase price, if any purchase price was agreed upon, by action and ratification of the Board of Directors;

6. That claimant, as an officer of the bankrupt, executed that certain mortgage and bond set forth in the secured proof of debt of the Northern Trust Company, # (139) S., filed herein and allowed as a secured debt and by said act waived his said vendor's lien, if any he had, and as against the trustee is estopped from asserting '[15]' it, for the reason that claimant well knew that said mortgage and bond covered after-acquired property as well as property owned by the bankrupt at the time of the execution of said mortgage and bond;

7. That claimant, as an officer of the bankrupt, permitted said land to remain on the records as unencumbered, except as to the said Northern Trust Company under said mortgage and bond thereby at all times fraudulently misrepresenting to the creditors of the bankrupt, and its trustee, the true financial

condition of the assets of the bankrupt;

8. That claimant's own statement in his proof of debt bars him from the relief sought, among which statements is: "And released to the said bankrupt whatever claim or interest he had in said premises or any part thereof by virtue of, and in accordance with, and because of said agreement, and delivered possession of said premises to bankrupt, and on his part the said contract was fully complied with, which said debt is past due and is now owing by said bankrupt to claimant and that no part thereof has been paid."

9. That no account was ever opened on the books of the bankrupt showing a transfer or purchase of said land;

10. That for the foregoing reasons claimant is estopped from asserting a vendor's lien; that said referee erred in granting and establishing said vendor's lien; that section 47 of the Bankruptcy Act, as amended in 1910, is a bar to the said lien allowed by the referee aforesaid; said order is against the law;

WHEREFORE, your petitioner feeling aggrieved because of such order, prays that the same may be reviewed as provided by the Bankruptcy Act and General Orders.

SAMUEL L. BOYD,
Trustee.

Dated September 3, 1913. [16]
State of Idaho,
County of Kootenai,—ss.

Samuel L. Boyd, the trustee and petitioner mentioned and described in the foregoing petition, does

hereby make solemn oath that the statements contained in the foregoing petition are true according to the best of his knowledge, information and belief.

SAMUEL L. BOYD,
Trustee.

Subscribed and sworn to before me this 3d day of September, 1913.

[Seal] W. F. McNAUGHTON,
Notary Public.

E. N. LaVEINE,
Attorney for Trustee.

J. H. WOURMS,
Attorney for State Bank of Commerce.

POST, AVERY & HIGGINS, and

A. E. RUSSELL,
Attorneys for Bank of California.

H. M. STEVENS,
Attorney for Carnegie Trust Company.

[17]

**Exhibit "A"—Order Allowing Secured Claim of
M. K. Wall.**

*In the District Court of the United States for the
District of Idaho, Northern Division.*

#449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

The proof of secured debt of M. K. Wall, a creditor herein, and the objections of Samuel L. Boyd, trustee

of said estate, the Northern Trust Company, Union Iron Works, Bank of California, Post, Avery & Higgins, and, all other objections thereto, having come regularly on for hearing, Frank Langley appearing of counsel for said M. K. Wall, and E. N. LaVeine, A. E. Russell, Reed & Boughton and John H. Wourms appearing for the trustee, Bank of California, Post, Avery & Higgins, the petitioning creditors herein, and Harry L. Day, assignee of the State Bank of Commerce, respectively, H. M. Stephens appearing for the Carnegie Trust Company, and, after argument of respective counsel, the consideration of briefs submitted the entire matter having been first duly considered and the Court being fully advised in the premises.

IT IS ORDERED that the said objections herein submitted, and each of them, be and the same are, hereby overruled;

IT IS FURTHER ORDERED that the claim of the said M. K. Wall be, and the same is, hereby allowed in the sum of Five Thousand (\$5,000) Dollars;

IT IS FURTHER ORDERED that the said M. K. Wall be, and he is, hereby declared to have a vendor's lien on the east half of the northwest quarter (E.1/2) (NW.1/4) of section thirty-five (35) and the southeast quarter (SE.1/4) of the southwest quarter (SW.1/4) of section twenty-six (26), township forty-nine (49) north, range two (2) W. B., Kootenai County, Idaho, the property [18] of said bankrupt, for the said sum of Five Thousand (\$5,000) Dollars, the purchase price thereof;

IT IS FURTHER ORDERED that the said

trustee be, and he is, hereby directed to sell in accordance with law and the practice of this Court, the above-described real property, and the whole thereof, and to apply the proceeds arising from said sale to the payment, satisfaction and discharge of the claim, constituting a vendor's lien on said property, of the said M. K. Wall, the residue and remainder of said proceeds, if any there be, to be passed to the proper fund of said estate;

AND IT IS FURTHER ORDERED that in the event that the above-described land does not sell for sufficient to satisfy and discharge, in full, the claim of the said M. K. Wall for the said sum of Five Thousand (\$5,000) Dollars, as herein allowed, then such deficiency, if any there be, be, and the same is, allowed as an unsecured claim against the said estate;

Done at Coeur d'Alene, Idaho, in said District, this 31st day of July, A. D. 1913

LAWRENCE L. LEWIS,
Referee in Bankruptcy. [19]

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Northern Division. In the Matter of Lane Lumber Company, Limited, a Corporation, Involuntary Bankrupt. Petition for Review of Referee's Order Allowing Secured Claim of M. K. Wall, in the sum of \$5,000 Establishing a Vendor's Lien. Before Lawrence L. Lewis, Referee in Bankruptcy. E. N. LaVeine, Attorney for Trustee. Residence and P. O. Coeur d'Alene, Idaho. Filed this 3d day of September, 1913, at 5:30 P. M. L. L. Lewis, Referee. Filed December 23, 1913. A. L. Richardson, Clerk. [20]

Report of Referee.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

IN BANKRUPTCY—No. 449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt,

REPORT OF REFEREE IN BANKRUPTCY OF
AN ORDER ALLOWING SECURED CLAIM
OF M. K. WALL IN THE SUM OF \$5,000
AND ESTABLISHING VENDOR'S LIEN.

To the Honorable FRANK S. DIETRICH, District
Judge:

I, Lawrence L. Lewis, Referee in Bankruptcy, in
charge of the above-entitled proceedings, do hereby
certify:

1.

That in the course of said proceedings, on, to
wit, the 31st day of July, 1913, an order was made
and filed herein allowing the claim of M. K. Wall
in the sum of Five Thousand (\$5,000.00) Dollars,
and establishing a vendor's lien on the real property
described in said order for said amount.

2.

That thereafter on, to wit, the 3d day of September, 1913, Samuel L. Boyd, trustee of the above-entitled estate, feeling aggrieved thereat, filed herein his petition for review, which said petition was duly granted.

3.

That a full, true and correct summary of the proceedings on which said order was made and based is as follows, to wit:

On, to wit, the 19th day of June, 1912, the claim of secured debt of M. K. Wall in the sum of Five Thousand (\$5,000.00) was duly filed herein; that thereafter on, to wit, the 10th day of August, 1912, the objections of the trustee thereto were duly filed in [21] said cause; that thereafter on, to wit, the 14th day of October, 1912, said proof of secured claim and the trustee's objections thereto came regularly on for hearing (See Record of Proceedings, Pages, 1320 to 1363, both inclusive): that thereafter the brief of the trustee herein, the brief of M. K. Wall, the said claimant, and the brief of Post, Avery Higgins, et al., were respectively filed in said cause after oral argument of the issues involved; and that thereafter the entire matter having been first taken under advisement, the said order of the 31st day of July, 1913, was duly made and filed in said cause (a copy of which said order is attached to the petition for review on the file herein and marked Exhibit "A"), to which said order the trustee herein duly excepted and submits that such order was and is erroneous in ten different particulars, which said particulars are fully set forth in his said Petition for Review.

THE PRECISE QUESTIONS SUBMITTED for consideration and decision are these:

1. Is the claimant, M. K. Wall, estopped by laches, or otherwise, from asserting a vendor's lien against the land set forth and described in said order,

under and by virtue of sections 3441 and 3443 of the Idaho Revised Codes?

2. Do sections 3441 and 3443 of the Idaho Revised Codes, providing for a vendor's lien against real property for the purchase price, or any part thereof, take precedence over the lien of the trustee in bankruptcy as provided in section 47 of the Bankruptcy Act of 1898, as amended in 1910? That is, does section 47 of the Act of 1898, as amended in 1910, operate as a bar to the assertion of a vendor's lien by M. K. Wall, the said claimant, as provided for in sections 3441 and 3443 of the Idaho Revised Codes?

3. Is the order from which this review is taken erroneous in point of law?

I hand up herewith, for the information of the Judge, the [22] following records, files and papers, to wit:

1. Petition for Review.
2. Record of Proceedings, pages 1320 to 1363, both inclusive.
3. Order Allowing Secured Claim of M. K. Wall.
4. Proof of Secured Debt of M. K. Wall; and, the Trustee's objections thereto.
5. Brief of Claimant.
6. Brief of Trustee.
7. Brief of Post, Avery & Higgins, Supporting Objections.

I HEREBY FURTHER CERTIFY that the above and foregoing are all the papers, records or files used or pertaining to this review.

Done at Coeur d'Alene, Idaho, in said District,
this 18th day of November, A. D. 1913.

Respectfully submitted,

LAWRENCE L. LEWIS,

Referee in Bankruptcy. [23]

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Northern Division. In the Matter of the Lane Lumber Company, Limited, a corporation, Involuntary Bankrupt. Report of Referee on an Order Allowing Secured Claim of M. K. Wall in the Sum of \$5,000, and Establishing a Vendor's Lien. Lawrence L. Lewis, Referee in Bankruptcy. Filed this 19th day of November, 1913, at 2 o'clock P. M. A. L. Richardson, Clerk. [24]

— ffl

*In the United States District Court for the District
of Idaho, Northern Division.*

In the Matter of the LANE LUMBER COMPANY,
a Corporation, Bankrupt.

Dec. 2, 1913.

E. N. LaVEINE, Attorney for Trustee.

FRANK LANGLEY, Attorney for Claimants.

Memorandum Decision.

MEMORANDUM DECISION COVERING PETITION FOR REVIEW BROUGHT BY THE TRUSTEE AND INVOLVING THE VALIDITY OF THREE VENDORS LIEN CLAIMS, NAMELY, THOSE OF M. K.

WALL, JOSEPH BROWN, AND MARY WALL.

DIETRICH, District Judge:

The one question submitted by the trustee upon these several petitions is whether or not the vendor of real estate in Idaho has and may maintain a lien for the unpaid purchase price upon land sold, after an adjudication in bankruptcy against the vendee, the vendor having, prior to the institution of the bankruptcy proceedings, commenced no action to foreclose the lien.

It is conceded that such liens are recognized and established by the statutes of the State. Section 3441 of the Idaho Revised Codes is as follows: "One who sells real property has a vendor's lien thereon independent of possession for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer." And section 3443: "The [25] liens of vendors and purchasers of real property are valid against everyone claiming under the debtor except a purchaser or incumbrancer in good faith and for value."

It is unnecessary to relate the facts involved, for the trustee concedes that such liens originally vested in the several vendors, the claimants here, which, if lost or divested at all have been so lost or divested by reason of the institution of the bankruptcy proceeding, and for no other cause. Indeed, the question for consideration is still further limited by the express concession on the part of the trustee, "that prior to the amendment to the bankruptcy act of 1910, amending section 47, the vendor's lien might

be established." We need, therefore, expressly decide only whether, upon the institution of a bankruptcy proceeding, the provisions of this amendment automatically operate to nullify or extinguish a pre-existing, valid vendor's lien. Section 47, so far as pertinent, is as follows, the amendatory language being underscored:

"Sec. 47a. Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estate; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; and such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied." [26]

It will be noted that the amendment does not in terms purport to act upon liens or to prescribe the conditions under which they may be either created or enforced; it defines the status of a trustee in bankruptcy, and declares the scope of his rights and remedies. As suggested by counsel for the trustee here, not unlikely the controlling purpose of the

amendment was, to relieve trustees from the disability imposed by the rule adopted by the courts, notably in such cases as *In re Economical Printing Co.*, 110 Fed. 514, and *York Mfg. Co. vs. Cassell*, 201 U. S. 304. But this rule relates not only to the validity of certain classes of liens under the State laws, but only to the right of the trustee to question claims that are defective or invalid under such laws. The rule is now, as it always has been, that with certain exceptions immaterial to the present inquiry, liens created by authority of, and in compliance with, the statutes of a State will be recognized and sustained in bankruptcy proceedings. The amendment of section 47 has in no wise affected this rule. *Love-land on Bankruptcy* (4th ed.), sec. 372. There is nothing in *Pacific State Bank vs. Coates*, 205 Fed. 618, out of harmony with this view. "Liens given or accepted in good faith and not in contemplation or in fraud upon the Act, and for a present consideration, and which have been recorded according to law, if record thereof was necessary in order to impart notice, shall, to the extent of such present consideration only, not be affected by this act." (Sec. 67d.) It is not questioned that these claims are in good faith, and that the liens were for a present consideration, and that no record thereof was required by the State statutes; as already stated, it is conceded that at the moment the bankruptcy proceeding was instituted the claims were valid subsisting liens. The act declares only that, "Claims which, for want of record or for other reasons, would not have been valid liens as against the claims of cred-

itors of the [27] bankrupt, shall be liens against his estate." (Sec. 67a.) Here, then, is the test: Were these liens invalid against the creditors of the bankrupt merely because they were not recorded? If they were, then the trustee might, under the amendment to section 47, challenge them; his right so to do is conferred by the amendment, and that is its only purpose and effect; it does not operate directly upon the claims of lien. Now, as we have seen, under the Idaho statute a vendor's lien, though unrecorded, is valid as against all the world, excepting only "a purchaser or incumbrancer in good faith and for value." Unless, therefore, a trustee has, by virtue of the amendment to section 47 of the bankruptcy act, the status of such a purchaser or incumbrancer, he cannot assail the lien, for under the law it has validity against all other claims. The controversy is therefore reduced to the question merely of the meaning of the clause in the State statute, "purchaser or incumbrancer in good faith and for value." At most, if we assume that the lands here are in the custody of the Court the trustee has the status only of a "creditor holding a lien by legal or equitable proceedings thereon," as, for example, the plaintiff in an attachment suit, or a judgment creditor after a levy of execution. But such a creditor is not a purchaser, nor is he an incumbrancer in good faith and for value. A citation of authorities upon this proposition is scarcely necessary.

The purpose and scope of the amendment, and the distinction between the claims here and cases to which it was intended to apply may be illustrated

by reference to another provision of the Idaho statutes: In section 3408 of the Revised Statutes it is declared that unless a chattel mortgage is executed with the formalities therein prescribed and filed for public record, it is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith and for [28] value. Differing from vendor's liens, it will be observed, such an unrecorded mortgage is void not only against purchasers and incumbrancers, but against "creditors." Prior to the amendment of section 47, it was quite generally held that a trustee in bankruptcy could not, upon behalf of general creditors, assail the validity of such an instrument, because such creditors, having no specific lien upon the property, were in no position to make the attack, and therefore the trustee, acting upon their behalf, could assert no better right. In *re Economical Printing Co.*, 110 Fed. 514, Remington on Bankruptcy, sections 1207-1/2 to 1210. The amendment meets this emergency by conferring upon him the status of a creditor who has such lien, and may therefore object to the assertion of a lien under an unrecorded mortgage. See, also, section 3170, which provides that transfers of personal property not accompanied by delivery of possession to the transferee are void not only against incumbrancers and purchasers, but also against "creditors." Possibly Congress might have conferred upon trustees all the rights and remedies of a purchaser or incumbrancer for value and in good faith, but it has not done so; it has chosen to limit such rights and remedies to those of one holding a

lien arising out of legal or equitable proceedings.

It is unimportant that the claimants did not commence actions to foreclose their liens prior to the institution of the bankruptcy proceedings. A suit to foreclose a lien is not material to its validity. The lien is established by operation of law, and is quite as complete before as after the institution of the proceedings to foreclose it.

It follows that the referee was right in holding that as a matter of law the claimants were entitled to liens. The record suggests some other questions, such as whether the claimants, or any of them, are estopped to assert their claims, or whether the [29] trustee should be subrogated to the rights of the mortgagee or trustee in a trust deed securing a large issue of bonds covering these and other lands, which indebtedness the trustee has now paid, but they have not been argued, and I therefore express no opinion relative thereto. The order of the referee will in each case be affirmed. [30]

[Endorsed]: No. 449. In the U. S. District Court for the District of Idaho, Northern Division. In the Matter of the Lane Lumber Company, Bankrupt. Memorandum Decision Covering {Petition for Review Brought by the Trustee and Involving the Validity of Three Vendors' Lien Claims, Namely, Those of M. K. Wall, Joseph Brown, and Mary Wall. Filed December 2, 1913. A. L. Richardson, Clerk. [31]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

IN BANKRUPTCY—#449.

M. K. WALL VENDOR LIEN CLAIM OF \$5,000.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

Findings of Fact and Conclusions of Law.

The vendor lien claim of M. K. Wall in the sum of \$5,000 came on regularly for hearing before the Court without a jury, on petition of the trustee for review of the order made herein by the referee, from the facts presented by the pleadings and the records, the Court finds the facts as follows, to wit:

I.

That on March 6, 1911, M. K. Wall, the claimant herein, sold and conveyed to the Lane Lumber Company, Limited, a corporation, bankrupt above named, by warranty deed, for the price of \$5,000, the east half of the northwest quarter (E.1/2 NW.1/4) of section 35, and the southeast quarter of the southwest quarter (SE.1/4 SW.1/4) of section 26, twp. 49, north, range 2, W. B. M., Kootenai County, State of Idaho; that no part of said price has ever been paid; and that there is now, and was on, to wit, the 20th day of June, 1911, the date of filing of the petition against said bankrupt, due and owing on said purchase price from the bankrupt to M. K. Wall, the said claimant, the sum of \$5,000, which said sum is, and was at

all times hereinbefore mentioned, wholly unpaid and unsecured otherwise than by the personal obligation of the buyer, the said Lane Lumber Company, Ltd.

II.

That on July 29, 1911, the said Lane Lumber Company, Ltd., was adjudged an involuntary bankrupt.
[32]

III.

That on September 22, 1911, Samuel L. Boyd qualified as trustee of the estate of said bankrupt, and has continued to and is now acting as such trustee.

IV.

That on June 19, 1912, M. K. Wall, the claimant, filed herein his proof of secured debt claiming \$5,000 as a vendor's lien against property of the bankrupt described as the east half of the northwest quarter (E.1/2 NW.1/4) of section 35, and the southeast quarter of the southwest quarter (SE.1/4 SW.1/4) of section 26, twp. 49 north. range 2, W. B. M., Kootenai County, State of Idaho.

V.

That on August 10, 1912, the trustee filed objections to said proof of debt.

VI.

That on July 31, 1913, the Honorable Lawrence L. Lewis, Referee herein, made and filed an order overruling said objections and allowing said claim as a secured claim and a vendor's lien.

VII.

That on September 3, 1913, the attorney for the trustee filed his petition for review of the order of the referee allowing said claim in the sum of \$5,000

establishing a vendor's lien upon said lands.

VIII.

That on November 19, 1913, the referee filed his report with the clerk of this court bearing upon said claim, and therewith transmitted all of the papers above mentioned and the record of the proceedings had before the referee herein being pages 1320 to 1363, inclusive.

IX.

That the claimant is not guilty of laches for waiting until after the filing of the petition in bankruptcy on June 20, 1911, before attempting to assert his vendor's lien. [33]

X.

That the title to all of the property of the bankrupt, including the lands described in claimant's vendor's lien, passed to the trustee on September 26, 1911, who was thereupon and is still "vested with rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings," but that such "rights," etc., are subordinate to said M. K. Wall's vendor's lien.

XI.

That the trustee had no notice of said vendor's lien until it was filed with the referee herein.

XII.

That the appraised value of the lands on which the vendor's lien is claimed placed thereon by the appraisers is \$919.00.

XIII.

That the purchase thereof was not authorized by

the Board of Directors of the bankrupt corporation.

XIV.

That M. K. Wall, the claimant, was secretary of the bankrupt, with full knowledge of the embarrassed financial condition of the bankrupt at the time of said transfer, which said transfer was not ratified by the Board of Directors.

XV.

That M. K. Wall, as an officer of the bankrupt, executed a certain mortgage and bond dated in 1908, originally for the sum of \$125,000, filed and allowed herein, which has been paid in full by the trustee.

XVI.

That M. K. Wall, as an officer of the bankrupt, permitted said land to remain on the records as unincumbered.

Conclusions of Law.

As a conclusion of law from the foregoing facts, the Court finds that the referee's order complained of by the trustee should be affirmed and said vendor's lien decreed on the property described [34] therein under sections 3441 and 3443, I. R. C., and under the Bankruptcy Act of 1898 and amendments.

Dated December 13th, 1913.

FRANK S. DIETRICH,

District Judge.

The foregoing findings are made in response to a suggestion of counsel for the trustee as a statement of the facts and of the theory upon which the order of December 2d, 1913, is made, affirming referee's order.

Done this December 13, 1913.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Northern Division. In the Matter of the Lane Lumber Company, Ltd., a Corporation, Involuntary Bankrupt. Findings of Fact and Conclusions of Law on Secured Debt of M. K. Wall for \$5,000. Filed December 13, 1913. A. L. Richardson, Clerk. [35]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

IN BANKRUPTCY—No. 449.

M. K. WALL VENDOR LIEN CLAIM OF \$5,000.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,

Involuntary Bankrupt.

Judgment.

In the above-entitled matter the petition of the trustee in bankruptcy for the review of an order of the reference in bankruptcy recognizing and allowing the claim of M. K. Wall for \$5,000.00 as a lien (vendor's) upon the east half of the northwest quarter of section 35, and the southeast quarter of the southwest quarter of section 26, township 49 north, range 2 west of Boise Meridian, Kootenai County, State of Idaho, under sections 3441 and 3443 of the Idaho Revised Codes, and under the bankruptcy act as amended, came on to be heard and was

argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said order of the referee be, and the same is, hereby affirmed.

Dated this 23d day of December, 1913,

FRANK S. DIETRICH,

Judge. [36]

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Northern Division. In the Matter of the Lane Lumber Company, Limited, a Corporation, Bankrupt. In Bankruptcy—No. 449. M. K. Wall Vendor Lien Claim of \$5,000.00. Judgment. Filed December 23, 1913. A. L. Richardson, Clerk. [37]

In the District Court of the United States for the District of Idaho, Northern Division.

#449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

Petition by Trustee for Appeal and Order Allowing Same.

PETITION ON APPEAL OF SAMUEL L. BOYD,
TRUSTEE IN BANKRUPTCY, OF THE
LANE LUMBER COMPANY, LIMITED A
CORPORATION, BANKRUPT.

To the Honorable F. S. DIETRICH, District Judge
of the District Court of the United States for
the District of Idaho, Northern Division:

Samuel L. Boyd, the duly appointed, qualified and

acting trustee of the above-named bankrupt, conceiving himself, as such trustee, and the unsecured creditors of the above-named bankrupt, aggrieved by the judgment made and entered on the 23d day of December, 1913, in the above-entitled matter, affirming the referee herein and establishing a vendor's lien in favor of M. K. Wall, in the sum of \$5,000, on the east half of the northwest quarter (E.1/2 NW.1/4) of section 35, and the southeast quarter of the southwest quarter (SE. 1/4 SW. 1/4) of section 26, twp. 49 north, range 2, W. B. M., Kootenai County, State of Idaho, does hereby appeal from such judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reason specified in the Assignment of Error, which is filed herewith, and he prays that this Appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the [38] Ninth Circuit.

E. N. LAVEINE,
Attorney for Samuel L. Boyd, Trustee of the Lane
Lumber Co., Ltd., a Corporation, Bankrupt.

I hereby waive citation.

FRANK LANGLEY,
Attorney for M. K. Wall.
The foregoing claim of appeal is allowed.

FRANK S. DIETRICH,
District Judge.

Dated December 23d, 1913.

Filed December 23, 1913. A. L. Richardson,
Clerk. [39]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

#449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

Assignments of Error by Trustee.

ASSIGNMENTS OF ERROR, BY TRUSTEE TO
ALLOWANCE OF CLAIM OF M. K. WALL,
AS A VENDOR'S LIEN, IN THE SUM OF
\$5,000.

Comes now, Samuel L. Boyd, as trustee in bankruptcy of the Lane Lumber Company, Limited, a corporation, bankrupt, by E. N. LaVeine, his attorney, and says that the judgment in said matter creating said vendor's lien is erroneous and against the just rights of said trustee, and the creditors of the bankrupt, for the following reasons:

FIRST: Because M. K. Wall, as secretary of the bankrupt, had full knowledge of its embarrassed financial condition at the time of the transfer to the bankrupt of the land upon which said vendor's lien claim has been established, which transfer was not authorized or ratified by the Board of Directors of the bankrupt; that as an officer he permitted the land in controversy to remain unincumbered until long after bankruptcy, in so far as his legal title or equity therein was concerned; that he waited until

after the qualification of the trustee, on September 22d, 1911, before attempting to assert his purported vendor's lien; that on account of his said laches he is estopped from asserting said vendor's lien against the trustee.

SECOND: Because the statutes of the State of Idaho, secs. 3441 and 3443 Idaho Revised Codes, under which M. K. Wall's, [40] \$5,000 vendor lien claim was sustained, had no application to the facts and the law upon which the Court sustained said lien, as against the trustee's title.

THIRD: Because the trustee in bankruptcy, under the Bankruptcy Act, had greater rights as against said M. K. Wall and his claim for vendor's lien than the bankrupt itself.

FOURTH: Because under the Bankruptcy Act the trustee was vested with title to said land paramount to that of the vendor lien claimant.

FIFTH: Because the findings, judgment and decree of this Court sustaining the action of the referee, allowing said claim for \$5,000, as a vendor's lien, is erroneous, illegal and against the law.

WHEREFORE, the said Samuel L. Boyd, trustee in bankruptcy, of the said Lane Lumber Company, Limited, a corporation, bankrupt, prays that said order judgment and decree, affirming the action and ruling of the referee allowing the claim of said M. K. Wall, as a vendor's lien, in the sum of \$5,000, be reversed, and that the Court may be directed to enter a decree reversing the action of the referee in

establishing said vendor's lien.

E. N. LaVEINE,
Attorney for Samuel L. Boyd, Trustee of the Lane
Lumber Co., Ltd., a Corporation, Bankrupt.

Filed December 23, 1913. A. L. Richardson,
Clerk. [41]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

#449.

In the Matter of the LANE LUMBER COMPANY,
LIMITED, a Corporation,
Involuntary Bankrupt.

Praeipie [for Transcript of Record].

PRAECIPE, BY TRUSTEE, FOR TRANSCRIPT
OF RECORD ON M. K. WALL, VENDOR
LIEN CLAIM, IN THE SUM OF \$5,000.

To Honorable A. L. RICHARDSON, Clerk of the
United States District Court:

You are hereby respectfully requested to prepare
a transcript of the following described papers with
the date of filing endorsed thereon, in the above-
entitled proceeding:

1. M. K. Wall's proof of secured debt, for \$5,000,
with exhibits attached thereto, filed with the referee
on June 19, 1912.

2. Order of referee allowing said proof of secured
debt for \$5,000, filed by the referee as of July 31,
1913, on the 16th day of August, 1913.

3. Petition, by trustee, for review of referee's

said order, filed with the referee on September 3, 1913.

4. Report of referee, Lawrence L. Lewis, on his order allowing above claim, filed with the Clerk of the United States District Court on November 19, 1913.

5. Memorandum decision of the District Judge filed December 2, 1913, affirming order of referee filed as of July 31, on the 16th day of August, 1913, allowing said claim as a vendor's lien.

6. Findings of fact and conclusions of law, by District Judge, filed December 13, 1913. [42]

7. Judgment or decree by District Judge, filed December, 1913.

8. Petition for appeal by trustee and order allowing same, filed December 23d, 1913.

9. Assignments of error, by trustee, filed December 23d, 1913.

10. This praecipe, with attached stipulation, filed December 23d, 1913.

Dated December 23d, 1913.

E. N. LaVEINE,

Attorney for Samuel L. Boyd, Trustee. [43]

[Stipulation as to Transcript of Record on Appeal.]

In order to facilitate the appeal, in this matter, it is hereby stipulated between Frank Langley, attorney for claimant, M. K. Wall, and E. N. LaVeine, attorney for Samuel L. Boyd, trustee, that the papers included in the foregoing praecipe, when certified by the Clerk of this court, shall constitute the transcript of Record on appeal to the Circuit Court of Appeals.

It is expressly agreed and understood that the lien claimant, M. K. Wall, by his stipulation herein does not waive his right to move to dismiss this appeal on the ground that the matter involved should be presented by petition for revision instead of appeal.

FRANK LANGLEY,

Attorney for M. K. Wall, Claimant.

Address: Coeur d'Alene, Idaho, Otterson Bldg.

E. N. LaVEINE,

Attorney for Samuel L. Boyd, Trustee.

Address: Coeur d'Alene, Idaho, Giguere Bldg.

[Endorsed]: No. 449. In the District Court of the United States for the District of Idaho, Northern Division. In the Matter of the Lane Lumber Company, Limited, a Corporation, Bankrupt. In re M. K. Wall Vendor Lien Claim for \$5,000. Petition by Trustee for Appeal, Order Allowing the Same, Assignments of Error, Praecipe. Filed December 23, 1913. A. L. Richardson, Clerk. E. N. LaVeine, Attorney for Trustee, Address, Coeur d'Alene, Idaho. [44]

Return to Record.

On presentation of the foregoing, it is ordered by the Court that a transcript of the record, as above stipulated, be transmitted to the United States Circuit Court of Appeals, for the Ninth Circuit, and the same is transmitted accordingly.

[Seal]

Attest: A. L. RICHARDSON,

Clerk. [45]

**[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]**

*In the District Court of the United States for the
District of Idaho, Northern Division.*

#449.

In the Matter of the **LANE LUMBER COMPANY,
LIMITED**, a Corporation,
Involuntary Bankrupt.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript consisting of M. K. Wall's proof of secured debt, for \$5,000, with exhibits attached thereto; order of referee allowing said proof of secured debt for \$5,000; petition by trustee for review of referee's said order; report of referee, Lawrence L. Lewis, on his order allowing said claim; memorandum decision, by the District Judge; findings of fact and conclusions of law by the District Judge; judgment or decree by the District Judge; petition for appeal, by the trustee, and order allowing same; assignments of error, by trustee, praecipe, with attached stipulation, each and all to be full, true and correct copies of the pleadings and proceedings in the above-entitled matter, prepared according to the praecipe heretofore set forth, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of \$27.70, and that the same has

been paid by the appellant.

Witness my hand and the seal of said District Court affixed at Boise, Idaho, this 26th day of December, 1913.

[Seal]

A. L. RICHARDSON,
Clerk. [46]

[Endorsed]: No. 2363. United States Circuit Court of Appeals for the Ninth Circuit. Samuel L. Boyd, as Trustee in Bankruptcy of the Lane Lumber Company, Limited, a Corporation, Bankrupt, Appellant, vs. M. K. Wall, Appellee. In the Matter of the Lane Lumber Company, Limited, a Corporation, Bankrupt. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Northern Division.

Received and filed December 29, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

